



June 26, 2015

To: Executive Board

Subject: **Disadvantaged Business Enterprise (DBE) Program Goal**

Recommendations

Adopt a DBE program goal of 3.5 percent on Foothill Transit's federally funded projects undertaken during federal fiscal years 2016 through 2018 (October 1, 2015 through September 30, 2018).

Analysis

United States Department of Transportation (DOT) regulations require that each public entity receiving DOT funding establish an overall DBE goal every three years, and in April of this year the Board authorized staff to conduct public outreach to obtain feedback from the vendor community relative to Foothill Transit's proposed DBE goal of 3.5 percent. This goal was calculated based on the number of DBE firms listed in the California Unified Certification Program (UCP) directory and identified as ready, willing and able to perform work on Foothill Transit's planned federally-funded projects during the current three-year period. DBE participation on Foothill Transit's federally funded projects over the past three years has averaged 2.2 percent.

Foothill Transit is under the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit which, in May of 2006 ordered a change in the administration of DBE programs by California recipients of U.S. Department of Transportation transit and highway funds. The court's decision resulted in Foothill Transit's implementation of a DBE race-neutral program. A race-neutral program allows Foothill Transit to establish a percentage goal for DBE participation for all federally funded projects to be undertaken by the agency, but does not permit Foothill Transit to require that proposers achieve a specific percentage goal for DBE participation on any one contract.

In the upcoming three federal fiscal years from October 1, 2015 to September 30, 2018, Foothill Transit's federal funds are currently planned to be used on construction projects, including the construction of an electric bus charging station in the City of Azusa as well as in the procurement of buses to replace or expand the current Foothill Transit revenue vehicle fleet. Revenue vehicle procurements are not subject to Foothill Transit's DBE program goal because the DBE requirements for bus procurements are instead handled directly



between the DOT and the bus manufacturers. Accordingly, Foothill Transit's DBE goal for the three-year period is based on the number of ready, willing and able DBE vendors for activities likely to be engaged for any construction related projects. Foothill Transit's experience with our DBE program leads staff to conclude that the overall demand for construction services throughout the Southern California area serves to limit the actual availability of DBE-certified vendors to fully meet the needs necessary to achieve the DBE goal that Foothill Transit has set for the period ending in September 2018.

Based on the current demand for and the estimated availability of contractors to participate on this type of work and on Foothill Transit's DBE participation history, significantly fewer of the listed Certified DBEs in the area will be available to complete the work under consideration. Staff considered the issue of actual availability in its methodology for arriving at a proposed DBE race-neutral participation goal. However, staff will take affirmative steps to make the DBE program more robust. For example, in order to ensure the broadest outreach to the DBE vendor community, each vendor currently certified under the California Unified Certification Program (UCP) will receive notification and an invitation to propose or bid on Foothill Transit's federally funded procurements. Currently, notification is provided to a more limited Foothill Transit DBE vendor list.

The methodology that was used in the determination of an appropriate DBE goal included utilizing data of available firms to provide the services that would be needed for construction related activities utilizing the most recent Census Data on County Business Patterns for Los Angeles County and the UCP. This figure was adjusted taking into consideration the actual DBE participation rate over the past three federal fiscal years and the current demand in the Los Angeles region for similar construction related activities. The UCP provides access to all registered DBEs from throughout the state. These sources support analyzing data utilizing the North American Industry Classification System (NAICS) to match the types of industries that would be used for the possible federally funded projects.

The 3.5 percent figure was calculated using a consultative process that included input from local small business owners during conversations at local Chamber of Commerce events and other Small Business events. Public notification of the June 11, 2015 public hearing that was held at 2:00 pm at the West Covina administrative offices regarding Foothill Transit's proposed DBE goal began shortly after the April Executive Board meeting by way of classified ads placed in the San Gabriel Valley Tribune, the Inland Valley Daily



Bulletin, La Opinion, and the Los Angeles Times. In addition, emails were sent to the 172 registered DBE vendors identified on the current UCP directory inviting the vendor community to comment via email or in person at the public meeting.

During the public outreach process, no vendors or other interested members of the public expressed opposition to Foothill Transit's proposed DBE goal. It is therefore proposed that Foothill Transit adopt a DBE goal of 3.5 percent for the upcoming three federal fiscal years. Pending Board action on June 26, 2015 Foothill Transit's FFY 2016 through FFY 2018 DBE goal will be widely published using a variety of means, including but not limited to Foothill Transit's website and through classified ads placed in the San Gabriel Valley Tribune, the Inland Valley Daily Bulletin, La Opinion, and the Los Angeles Times.

As provided for in the federal regulations and as mentioned earlier, Foothill Transit's DBE program would only apply to its DOT-assisted projects with the exception of bus purchases. Applicable state and local requirements and regulations related to affirmative action, as modified by the California Civil Rights Initiative (Proposition 209), apply to an organization's state and local contract projects, but not to its DOT-assisted projects. Proposition 209 prohibits the granting of preferential treatment in public contracting based on an individual's or firm's race, sex, color, ethnicity or national origin.

To ensure maximum DBE participation, staff will continue to conduct outreach to small businesses, as well as to certified and prospective DBE vendors in order to meet its triennial goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes occasions where a DBE is awarded a prime contract through customary competitive procurement procedures and when a DBE firm is awarded a subcontract on a prime contract that does not have a DBE goal.

Fiscal Impact

There are some minor costs related to advertising the DBE program goal and contracting opportunities. These expenses were included in the adopted Fiscal Year 2015 – 2016 budget.

Sincerely,

Kevin McDonald
Deputy Executive Director

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Executive Director